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June 14, 1993

Ms. Donna R. Searcy
Secretary
Federal Communication Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Comments in MM Docket No. 93-106

Dear Ms. Searcy

Transmitted herewith, on behalf of the National ITFS Association, are the original and five (5) copies of its Comments in the above-referenced docket.

Should you have any questions with respect to the above matter, please contact the undersigned.

Very truly yours


Wayne Coy Jr.

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JUN 14 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

In re

Amendment of Part 74 of the
Commission's Rules Governing Use
of the Frequencies in the
Instructional Television Fixed Service)

MM Docket No. 93-106

To: The Commission

COMMENTS

The National ITFS Association ("NIA"), through its attorney, files Comments in the above-captioned proceeding urging the Commission to exercise great care and caution in its implementation of the so-called "channel loading" concept. In support thereof, NIA offers the following:

BACKGROUND

1. NIA is a national association of more than 60 educators in 26 states and the District of Columbia who are using Instructional Television Fixed Service ("ITFS") frequencies to provide educational services to students enrolled in for-credit courses in elementary, secondary, college, post-graduate and career training. They include public, private, and parochial schools, community and junior colleges, public and private universities,

non-profit corporations.

2. The purpose of the organization is to promote the effective use of the ITFS spectrum for its intended educational use and to encourage and assist potential user institutions to develop local or regional instructional networks using ITFS. In addition, the Association, through a quarterly newsletter, keeps its members informed as to regulatory and judicial decisions affecting the industry, and presents articles of interest to educators generally involved in "distance learning".

3. NIA is an active participant in proceedings before the Commission, having filed Comments in every Docket affecting ITFS since 1984. NIA has been, and remains, a believer in the concept of an informed working partnership with the wireless cable industry as a way to promote investment in educational facilities.¹ In support of that belief, NIA frequently finds itself urging care and caution in various Rule Making proceedings when the balance in the partnership seems imperiled. In the instant case, we are not concerned so much with channel loading per se, but the fear that the concept will lead (some say inevitably) to de facto reallocation of up to 3 out of every 4 presently allocated ITFS channels and an effective end of the partnership with the wireless industry.

THE FEAR OF REALLOCATION

4. As we have already observed in the past with the 12/20 hour minimum schedule and channel mapping, what is permitted by the FCC to be offered often becomes the all but non-negotiable standard which an educator must accept. In truth, access to a single channel to deliver educational programming may be enough to meet the needs of some, if not many, educators. Indeed, if an educator were to insist on the simultaneous use of two or more channels from the beginning, the partnership with the wireless operator may never get off the ground. What is needed is a clear and unequivocal position of the FCC, to be clearly and unequivocally stated in every excess capacity lease approved by the Commission, that the educator has a right of unrestricted access to all channels of which it is the licensee. Further, it must also be clear that this right cannot be bargained away or altered in any way. This access to additional channels may be subject to a reasonable notice provision, presumably not to exceed the one year notice now required for seeking additional hours for educational programming. It must also be subject to the "no penalty" provision as that is now applied to the recapture concept.

5. Without this fundamental concept at the heart of the regulatory scheme, there is great fear that widespread use of

loading." How "senseless" will it seem in the future to require an educator to bear the burden of being the licensee, with all of the obligations and responsibilities that implies, of facilities it does not use, over which it has no effective control and to which it has either no right of access or a crippled right of access. Proponents of such a change will argue that the threat of such access together with the financial burden of supporting an

educator should have the benefit of a five day "cool off period" after executing an excess capacity lease during which time it can exercise its right to change its mind. The imposition of the use of such standard clauses would not have any negative burden on the negotiation of any other terms of the lease about which the FCC has no oversight responsibility or concern. Indeed, the institution of such a proposal would help to make the playing field a little more level and the effective exercise of the FCC's responsibility a little more certain as to those matters about which it is legitimately concerned.

THE IMPACT OF NEW TECHNOLOGY

7. It is conventional wisdom that digital compression technology will have a dramatic impact on the ITFS/wireless industry. Yet no one knows when this will happen or the exact impact it will have, nevermind its cost and its practicality. Indeed it seems somewhat foolish to speculate. For those who believe that we are less than two years from implementation of the technology, the issue of channel loading is a very temporary expedient. For others, particularly those for whom the expedient could have a long term devastating effect, delays beyond a two to four year period could cause major problems. NIA supports a shorter rather than a longer sunset on the theory that it can be extended more easily than a longer one can be recalled. Based on the industry view, NIA supports a two year sunset.

8. As the new digital technology becomes available, the FCC should adopt rules that require that a wireless operator electing to use the technology must make the technology available to the educator at the same time it installs it for its own purposes. Further, as of the date the technology is first used, the educator should be given the unrestricted full-time use of four channels or the number of channels available in a six megahertz bandwidth, whichever is greater. Such provisions would make channel loading much more like a temporary expedient worth bearing.

OTHER MATTERS

9. Since the Commission does not, historically, require a licensee to report on such matters as changes in its program schedule from that proposed in the application, or changes in the excess capacity lease, and since channel loading is temporary, NIA does not support a change in the point system to choose among mutually exclusive applicants based on whether or not channel loading is proposed.

10. In view of the present rule that an applicant should not apply for more channels than it needs for educational purposes, what are to be the standards for an educator applying for more than four channels? In this connection, NIA specifically rejects the notion that an educator "needs" four channels to get a wireless partner even though it may only end up using one channel. To require the educator to demonstrate simultaneous use of all four channels before it can apply for additional facilities may prove

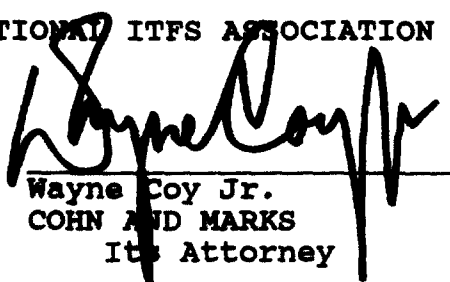
burdensome to both the educator and the wireless operator, it may be the only way an educator can get effective use of a second channel for its educational purposes. To allow it to file for a second set of channels while only using one channel requires a change in the rules. NIA prefers the latter position.

As stated above, the National ITFS Association urges that the Commission proceed carefully in crafting rules that permit channel loading so that educational interests are not crushed in the process.

Respectfully submitted,

NATIONAL ITFS ASSOCIATION

By


Wayne Coy Jr.
COHN AND MARKS
Its Attorney

June 14, 1993